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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,565	03/23/2004	David L. Marvit	073338.0188 (04-50461)	4219
5073	7590	11/14/2006	FLA	
BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980			EXAMINER LIANG, REGINA	
			ART UNIT 2629	PAPER NUMBER

DATE MAILED: 11/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/807,565	Applicant(s) MARVIT, DAVID L.	
	Examiner Regina Liang	Art Unit 2629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7-13 and 15-21 is/are rejected.
- 7) ☒ Claim(s) 4-6 and 14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>3/23/04, 11/21/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 17-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 17-20 although written to include a computer readable medium, however for a logic, i.e., computer program, to be statutory subject is must be claimed as a computer program stored on a computer readable medium as set forth in page 52 of the Interim Guidelines, thus without such the claims are non-statutory in nature.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2, 8, 9, 11, 12, 15, 17, 18, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bartlett (US 6,573,883) in view of Chervený (US 6,564,144) and Shpiro (US 6,576,015).

As to claims 1, 2, 9 and 21, Fig. 5 of Bartlett discloses a motion controlled handheld device comprising:

a user interface comprising a display (710) having a viewable surface and operable to generate a current image;

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a gesture database maintaining a plurality of gestures (catalog of gesture commands in Fig. 3), each gesture defined by a motion of the device with respect to a first position of the device;

a motion detection module (110 in Fig. 3) operable to detect motion of the device within three dimensions and to identify components of the motion in relation to the viewable surface (col. 4, lines 37-50); and

a control module (120 in Fig. 3) operable to:

track movement of the handheld device using the motion detection module; compare the tracked movement against potential ones of the gestures (col. 4, lines 53-60), determine that the tracked movement does not indicate one of the gestures or indicates one of the gestures (col. 5, lines 40-47; if the angular orientation is less than θ_1 , the tracked movement does not perform the gesture; if the angular orientation is greater than θ_1 , the tracked movement performs the gesture).

Bartlett does not disclose generating a feedback reporting that the tracked movement does not indicate the gesture or indicates the gesture. However, Fig. 6 of Cherveney teaches a data input device having a gesture recognition routine, the gesture recognition routine outputs an audible output (indication) to the speaker indicating that the gesture has been recognized (see col. 9, lines 49-63 for example; this corresponds to generating feedback to indicate the gesture). Also, Shpiro teaches a device comprising an indication for indicating the failure of a match such that an audio or visible feedback indication is provided to the user to identify the matched and indicating whether it is matched or not matched (col. 5, lines 1-6). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Bartlett to have the indicating features as taught by Cherveney and Shpiro to provide a

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feedback indication to the user clearly indicating to the user whether it indicates a gesture or not (col. 5, lines 3-6 of Shpiro).

As to claim 8, Shpiro teaches generating audio output using the speaker.

Claims 11, 12, 15, 17, 18, which are method claims corresponding to the above apparatus claims, are rejected for the same reasons as stated above since such method "steps" are clearly read on by the corresponding "means".

5. Claims 3, 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bartlett, Chervny and Shpiro, and further in view of Keely (us 6,791,536 hereinafter Keely).

As to claim 3, Bartlett as modified by Chervny and Shpiro does not disclose the feedback to display an icon associated with the gesture. However, Shpiro teaches that feedback indications can be both visible and audio indications and further Keely teaches that visible feedbacks comprise graphical icons (Keely col. 8 lines 11-14). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Bartlett as modified by Chervny and Shpiro to comprise icons as the visible feedback indication such that the user can easily distinguish the specific feedback. In addition, to associate the icon with a particular gesture would have been further obvious to one of ordinary skill in the art at the time the invention was made to clearly indicate to the user which gesture is being selected to avoid confusion.

As to claim 7, Keely teaches to provide a tactile (vibration) feedback to the user.

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6. Claims 10, 16, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bartlett, Cherveny and Shpiro, and further in view of Feinstein (us 2002/0190947).

Bartlett teaches using multiple motion sensors for sensing the motion of the device (col. 5, lines 2-4). Bartlett as modified by Cherveny and Shpiro does not explicitly disclose using first, second and third accelerometer for detecting acceleration along a first, second and third axis. However, Feinstein teaches using three accelerometers for detecting the motion of the device along a first, second and third axis (see Fig. 14). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Bartlett as modified by Cherveny and Shpiro to use three accelerometers as taught by Feinstein since the three accelerometers measure the acceleration of the device along three independent directions precisely.

Allowable Subject Matter

7. Claims 4-6, 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

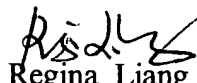
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Regina Liang whose telephone number is (571) 272-7693. The examiner can normally be reached on Monday-Friday from 8AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Hjerpe, can be reached on (571) 272-7691. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Regina Liang
Primary Examiner
Art Unit 2674

10/27/06